

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

- - - - -

LLOYD T. SCHUENKE,

Plaintiff,

v.

ORDER

10-cv-788-bbc

RICK RAEMISCH, MICHAEL THURMER,
WILLIAM POLLARD and GARY HAMBLIN,

Defendants.

- - - - -

Plaintiff Lloyd Schuenke is proceeding in this action on his claim that the air quality in his cell triggers plaintiff's severe asthma, forces him to use his asthma medications excessively and causes other health problems in violation of the Eighth Amendment. Defendants have answered the complaint and a preliminary pretrial conference was held on April 27, 2011. Now plaintiff has filed a motion for voluntary dismissal in which he asks the court to "dismiss the above entitled action without costs and any prejudicial effects against the petitioner."

When a motion for voluntary dismissal is filed after a defendant has filed an answer,

Rule 41(a)(2) provides that the action may be dismissed by the plaintiff "only upon order of the court and upon such terms and conditions as the court deems proper." Because the defendants have been required to defend this action, I will grant plaintiff's motion for voluntary dismissal only on the condition that the dismissal is with prejudice, unless defendants agree to a dismissal without prejudice. If the defendants do not agree to a dismissal without prejudice, then plaintiff will have an opportunity to withdraw his motion.

ORDER

IT IS ORDERED that defendants may have until June 20, 2011, in which to advise plaintiff and the court whether they agree to dismissal of this action without prejudice. If defendants agree to such a dismissal, the clerk of court is directed to close this case. If defendants do not agree to such a dismissal, plaintiff may have until June 27, 2011, in which to withdraw his motion for voluntary dismissal or to advise the court that he has no objection to a dismissal with prejudice. If, by June 27, 2011, plaintiff fails to request withdrawal of his notice of voluntary dismissal, the clerk of court is directed to enter judgment dismissing this case with prejudice.

Entered this 13th day of June, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge